

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1054 – SB 1738

April 24, 2012

**SUMMARY OF AMENDMENTS (017120, 017287):** Amendment 017120 deletes all language after the enacting clause. Expands the meaning of “cigarette” to include any cigarette produced by a cigarette rolling machine at a retail establishment. Defines the terms “cigarette rolling machine”, “cigarette rolling machine operator”, and “loose tobacco”. Classifies a cigarette rolling machine operator as a tobacco distributor. Requires the three-cent per cigarette tax, levied on the consumer, be applied to cigarettes produced by cigarette rolling machines, which shall be reduced by the extent of tobacco tax paid by the cigarette rolling machine operator for the purchase of tobacco products used to produce cigarettes via cigarette rolling machines. Requires cigarette rolling machine operators to keep records of tobacco sold and of any cigarettes made from such tobacco through the use of cigarette rolling machines. Requires every cigarette rolling machine operator to permit the Commissioner of Revenue, or the Commissioner’s authorized agent, to inspect the operator’s cigarette rolling machine at any time. Requires cigarette rolling machine operators to become licensed and pay a license fee of \$500 for each cigarette rolling machine purchased or leased for use, or controlled, possessed or maintained by a cigarette rolling machine operator. Beginning on or after January 1, 2014, prohibits cigarette rolling machine operators from: using, offering for use, or allowing tobacco not currently listed on the approved directory to be used in their cigarette rolling machines; possessing any loose tobacco other than roll-your-own tobacco currently listed on the approved directory; possessing more than 16 ounces per cigarette rolling machine of loose tobacco of any brand within a directory-approved roll-your-own brand family at any given time; or accepting or allowing its cigarette rolling machines to be used to process cigarettes with tobacco that was not first purchased or obtained from the operator. Requires all cigarette rolling machines, which are purchased, leased, used, controlled, possessed, or maintained by a cigarette rolling machine operator, to contain a secure meter, which cannot be altered, that counts the number of cigarettes made, manufactured, or fabricated by the machine. Requires cigarette rolling machine operators to provide meter information to the Commissioner of Revenue upon request, and to maintain meter records for a period of seven years. Authorizes the Commissioner of Revenue to revoke or suspend the license of a cigarette rolling machine operator when the operator has violated the provisions specified in this bill as amended, and to impose civil penalties in an amount not to exceed 500 percent of the retail value of the tobacco sold, offered for sale, or possessed for sale, or \$5,000. Declares any tobacco sold, offered for sale, or possessed for sale by a cigarette rolling machine operator which is in violation of this bill as amended to be contraband and subject to seizure and forfeiture. Authorizes the Commissioner of Revenue to require, upon request, any additional information as is necessary to enable the Commissioner to ensure a cigarette rolling machine operator is in compliance with the bill as amended. Creates a Class A misdemeanor for cigarette rolling machine operators, prior to January 1, 2014, who fail to provide adequate notice to prospective buyers or lessees of cigarette rolling machines concerning the regulation of

cigarettes made by cigarette rolling machines, and the tobacco utilized within such machines, enacted as part of this bill as amended.

Amendment 017287 adds language to the bill as amended requiring the Commissioner of Revenue, on or before February 1, 2013, to report to the Finance, Ways and Means Committees of both Houses concerning cigarette rolling machine operators in Tennessee. Such report shall identify the number of licensed cigarette rolling machine operators in Tennessee as of August 1, 2012, and as of January 15, 2013.

#### FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

#### FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

##### **Unchanged from the original fiscal note.**

##### Assumptions applied to amendments:

- This bill as amended will require cigarette rolling machine operators to pay the three-cent cigarette tax (as a tobacco distributor) on each cigarette produced by the operator's cigarette rolling machines. This tax will be passed on to the consumer producing the cigarettes via cigarette rolling machines.
- The passing of the three-cent cigarette tax to roll-your-own consumers, and requiring such consumers to only utilize a certain higher-taxed type of tobacco, will substantially increase the total price of cigarettes for roll-your-own consumers.
- The extent of the price increase incurred by roll-your-own consumers will no longer justify such consumers utilizing cigarette rolling machines as a method for rolling-their-own cigarettes. In lieu of utilizing such cigarette rolling machines, the majority of roll-your-own consumers will begin rolling-their-own cigarettes at home, or elsewhere, because the additional cigarette and tobacco taxes will not be applicable to cigarettes rolled off-premises away from the cigarette rolling machine operator's place of business.
- Consumer demand for cigarette rolling machines is assumed to decrease dramatically as roll-your-own consumers respond to an overall price increase and an imposed limitation on tobacco selection.
- As consumer demand for cigarette rolling machines decrease, cigarette rolling machine operators will no longer offer such machines at their place of business because the additional regulation, taxing requirements, and reporting requirements will no longer justify remaining in a business with rapidly declining profit margins.
- Given that cigarette rolling machine operators are likely to remove cigarette rolling machines and no longer engage in this form of business, any increase in license fee revenue is estimated to be not significant.

- Current cigarette rolling machine operators generally charge rental fees for the use of such machines. State and local sales tax is collected on the rental fees. If the retailers remove cigarette rolling machines from their businesses, as a result of this bill as amended, recurring decreases in state and local sales tax revenue will occur.
- A very small segment of the roll-your-own consumer market would be expected to return to conventional purchases of cigarettes produced by tobacco product manufacturers as defined under current law; therefore, a recurring increase in tobacco tax revenue and state sales tax revenue to the state, and recurring local option sales tax revenue to local governments.
- Any recurring increase in state revenue derived from incremental tobacco tax and incremental sales tax occurring as a result of a small segment of the market returning to conventional brands of cigarettes is expected to be offset by recurring decreases in state sales tax revenue occurring as a result of cigarette rolling machine operators no longer offering the sales-taxable usage of cigarette rolling machines; therefore, any net fiscal impact to state revenue is estimated to be not significant.
- Any recurring increase in local option sales tax revenue occurring as a result of a small segment of the market returning to conventional brands of cigarettes is expected to be offset by recurring decreases in local option sales tax revenue occurring as a result of cigarette rolling machine operators no longer offering the sales-taxable usage of cigarette rolling machines; therefore, any net fiscal impact to local government revenue is estimated to be not significant.
- Any civil penalty revenue and fine revenue is expected to be not significant.
- Any increase in state expenditures for the Department of Revenue to prepare and deliver a report to the specified committees will be not significant and can be accommodated within existing resources without an increased appropriation or a reduced reversion.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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